IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 32 OF 2007
IN
TAX APPEAL NO. 8 OF 2007

M/S. MAVANY BROTHERS ... Applicant
Versus
COMMISSIONER OF INCOME TAX AND ANR ... Respondents

Mr. Sarangan, Senior Advocate with Mr. P. A. Kamat, Advocate for the applicant.

Mr. S. R. Rivankar, Advocate for the respondents.

Coram:- S.A.BOBDE &
N. A. BRITTO, JJ.

Date:- 26th March, 2007

P.C.

Heard. Prima facie, there is no merit in the submission on behalf of the Department that Section 265 of the Income Tax Act, 1961 does not permit this Court to grant a stay of the order in appeal. Section 265, reads as follows:

> "265. Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in case."

2. It is clear from the provisions of Section 265 that the tax is not made payable in accordance with the assessment where there is an appeal to this Court. There is a well known distinction in law between a reference and an appeal which need not be elaborated upon here. Merely because the tax is payable when a reference is made to this Court, it

cannot be inferred that it is so payable even if an appeal is admitted by this Court, particularly when not so provided for by Parliament.

3. Having regard to the basic question of liability of the appellant, we are of the view that it would be appropriate in the interest of justice, to grant an interim stay pending the appeal.

S.A.BOBDE, J.

N. A. BRITTO, J.

ssm.